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THE WHITE HOUSE
WASHINGTON

file
Civil
Rights
General

TO: Mike Uhlmann

FROM: **MIKE BAROODY**
Director of Public Affairs

This has been sent to me by Collyer's office for clearance. Would you please read over it and let me know if there are any comments or corrections I should transmit to his office?

Thanks.

Call Baroody
OK.

SPEECH BY

ROBERT B. COLLYER, DEPUTY UNDER SECRETARY
FOR EMPLOYMENT STANDARDS

BEFORE THE

AMERICAN BAR ASSOCIATION'S ANNUAL MEETING
OF THE
SECTION OF LABOR AND EMPLOYMENT LAW

SAN FRANCISCO, CALIFORNIA

August 10, 1982

OFCCP is the office in the Employment Standards Administration (ESA) which has the responsibility for administration and enforcement of the three equal employment opportunity mandates which make up the contract compliance program -- Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and Section 503 of the Vietnam Era Veterans Readjustment Assistance Act (VEVRA).

The Executive Order prohibits Federal contractors from engaging in employment discrimination and requires that they take affirmative action to ensure that applicants and employees are treated without regard to race, color, religion, sex or national origin. Section 503 of the Rehabilitation Act and Section 402 of VEVRA impose similar prohibitions and obligations on Federal contractors in their employment practices relating to qualified handicapped individuals and Vietnam Era and certain disabled veterans. The Department is committed to the enforcement of these mandates and the discharge of its responsibilities under them.

The Nature and Extent of Employment Discrimination

In September 1963, the U.S. Commission on Civil Rights published its findings from hearings held in four cities across the country. These findings were part of the data base which led to the enactment of the Civil Rights Act of 1964 and predated the establishment of the OFCCP a year later. The Federal contractor universe then, as now, included many of the largest and best-paying employers nationwide. And it was precisely with these employers that the most sought-after jobs and some of the most jealously-guarded systems of job preference were to be found. In each of these four cities, the Commission took testimony from officials of major Federal contractor establishments, as well as from union officials and representatives of Federal agencies.

Discriminatory practices found included:

- Racially segregated facilities;
- Union contracts which permitted sons or relatives of white male incumbents to be given preference or exclusive entry rights into skilled trades;
- Racially discriminatory recruiting, seniority systems, apprentice selection systems and on-the-job training programs;

- Use of discriminatory screening and referral practices by State and private employment agencies; and
- Lower pay for equal or harder work.

Against this background, OFCCP was established in September 1965 with a mandate to ensure that Federal contractors undertake affirmative action.

Efforts by Federal contractors and by the government have eliminated most of the overtly discriminatory practices evident in the 1960's and have made substantial progress in addressing discrimination as it exists today. To help define the nature and extent of the program today, let me share with you what some recent compliance reviews and complaint investigations of Federal contractors have disclosed:

- failure to recruit qualified minorities and women;
- failure to hire qualified minorities and women;
- disparate treatment in promotion and job assignment;
- concentration of women in lower paying positions as a result of discriminatory placement actions;

- failure to afford training opportunities to minorities and women and the handicapped;
- failure to maintain a working environment free of harassment; and
- hiring qualified minorities and women at salaries below the established minimum for white males.

Often, these problems are the result of companies not making a strong enough affirmative effort to overcome inequities in the marketplace or workplace. Sometimes, they are the result, even today, of direct discrimination. And in many cases, they are related to inadequate training which keeps workers from moving into better jobs.

The OFCCP has been given a mission by statute and Executive Order. That mission is law enforcement. It is founded on basic public policy that discrimination on the basis of race, sex religion, national origin, veteran status or handicap is wrong; that such discrimination wastes human talent, leads to workplace disruption, lowers productivity, efficiency and morale, and is fundamentally at odds with our free enterprise notions of "competition" and "freedom of contract."

The mission then -- indeed the mandate -- of OFCCP is to insure that Federal contractors do not illegally discriminate in their employment practices and that human talent previously

not fully utilized, is not wasted; but that Federal contractors make meaningful efforts at including persons in their workforce solely on the basis of individual ability and interest. These requirements are set out in statute and Executive Order language, both prohibiting discrimination and requiring affirmative action to ensure that employment policies and practices are, in fact, nondiscriminatory.

To carry out this mission, OFCCP employees must be professionals. They must behave with both tact and firmness. They must have a sufficient presence in the contractor community so we can assist contractors who want to carry out their responsibilities and discourage illegal behavior by contractors who have less of a commitment.

We have three major goals for the next two years: first, to reform the regulatory structure of the program and eliminate unnecessary paperwork burdens that have been placed on Federal contractors; second, to focus the program on results, not process; and third, to better use our resources and better train our compliance officers. By concentrating on these three goals we are determined to eliminate unnecessary confrontation with employers and, at the same time, help open up opportunities for the beneficiaries of this program.

To address these goals, we have undertaken many specific management initiatives. Let me briefly outline some of these and the new emphasis on program direction that we have introduced.

MANAGEMENT REFORMS

Reformed management systems and procedures are critical to the effective functioning of the program. We are implementing a new objective system of selecting contractors for review; we are directing more resources toward improving job opportunities for handicapped individuals and Vietnam era veterans; and we are markedly improving our ability to review more contractors at lower cost. In the short time that we have been responsible for this program, we have begun major management initiatives in these areas. I would like to discuss some of them with you.

1. Selection Procedures for Scheduling Contractor

Establishment for Review .

A system for establishment selection has been under development and is scheduled for implementation by the end of 1982. The procedures will permit us to review the equal employment opportunity performance of a greater number of contractor establishments with less available resources.

The system will standardize selection procedures across the country by establishing review priorities based on such objective criteria as (1) frequency of previous reviews, (2) contractor performance as reported on annual EEO reports, (3) existence of complaints filed against establishment and (4) economic conditions at the establishment (i.e.,

expanding or contracting workforce). For example, under our new procedures a greater number of contractors will have a desk audit of their written affirmative action programs than have had them in the past. Under this procedure, an on-site review will normally be scheduled only in those instances where the desk audit reveals a substantive deficiency.

2. Complaint Intake Procedures.

In the past, OFCCP has accepted complaints of discrimination filed by individuals which, when reviewed, were determined to be outside OFCCP jurisdiction or to lack even prima facie merit. In some cases, this determination was not made until after a full-scale investigation was underway. This failure to quickly ascertain whether OFCCP had jurisdiction over a particular complaint or whether a complaint had prima facie merit not only wastes our resources, but also raises false expectations for complainants. In addition, failure to screen out non-justiciable complaints quickly results in the aging of meritorious complaints.

New procedures will substantially reduce the initial processing period by up to 60 days and will streamline the intake process. This will result in substantial savings of staff hours. The new system includes changes to the complaint form to obtain more necessary information up-front from the complainant.

Under the new system, contractors will receive copies of complaints filed under all three programs, as soon as OFCCP jurisdiction has been firmly established. Apart from the equity of notifying the employers of charges filed, we find that early notification leads to early -- and satisfactory -- settlements in many cases.

3. Compliance Standards Task Force.

The purpose of the Task Force was to determine the extent to which OFCCP demonstrates consistency and integrity in the application of its policies and procedures during investigations undertaken pursuant to Executive Order 11246, Section 402, and Section 503. On November 22, 1981, the group began reviewing correspondence generated by the complaint review process. As of March 12, 1982, the Task Force had reviewed 239 proposed or executed Conciliation Agreements, 170 Letters of Commitment, 70 Letters of Deficiency and 66 Notices to Show Cause. In addition, approximately a dozen administrative complaints have been evaluated as having 4 Notices of Alleged Noncompliance. The Task Force has concluded from its review of over 800 enforcement documents that compliance officers are generally adhering to established policies and regulations. Regional and Area Offices, which were not following requirements, have been notified and corrective actions have been

taken. As a result of the Task Force's work, the enforcement process will be revised to standardize our approach for notifying contractors of deficiencies and for conciliating resolutions of problems.

4. Systemic Discrimination Task Force.

This Task Force was convened on May 3, 1982 for approximately 120 days to improve the quality of case work involving systemic issues of discrimination. Systemic discrimination exists when a group of individuals has been directly affected by a contractor's discriminatory methods of operation. The Task Force is charged with the following objectives:

- Revise systemic discrimination methodologies to be included as policy directives in the Federal Contract Compliance Manual;
- Train National Office personnel responsible for systemic oversight in the new methodologies; and
- Process all outstanding systemic discrimination cases pending in the National Office.

5. Improved Case Management.

In Fiscal Year 1981, OFCCP conducted 3,135 compliance reviews in contractor establishments employing more than 2 million persons. We investigated 2,135 complaints, of which 1,502 involved handicapped persons and 174 were from veterans. All told, OFCCP conducted 503 (19%) more

compliance reviews and 410 (20%) more complaint investigations with 102 (8%) fewer employees and \$1.6 million less than the previous year, FY 1980.

We believe that high quality compliance reviews can be accomplished in less time than it now takes, resulting in savings to the contractor and increased ability of the compliance program to review its assigned universe. OFCCP plans to conduct 317 (9%) more compliance reviews and 582 (21%) more complaint investigations in FY 1982 with 253 (23%) fewer staff and \$7.9 million less than in FY 1981.

March 4, 1982 the Director of OFCCP charged every Assistant Regional Administrator of the program with implementing a plan of case management that ensures the development of an efficient high-quality product. And we are beginning to get results.

6. Increased Resources to 503/402 Enforcement.

A larger share of our resources has been apportioned to our enforcement obligations under Section 503 of the Rehabilitation Act and Section 402 of the Vietnam Era Veterans Readjustment Act for FY 1982. With an ever increasing case inventory, which totalled 2,855 by the end of the first quarter in FY 1982, and as the principal agency enforcing equal employment opportunity laws governing the rights of the handicapped and Vietnam Era veterans, we have a responsibility

to fulfill our obligations to those individuals. With this concentrated effort to focus on and add more resources to Sections 503/402 enforcement, we now project completion of 2,718 complaint investigations (mostly 503 cases) by end of FY 1982. This represents an increase of 923 actions from the previous projection of 1,795. In FY 1981, slightly more than one out of four cases were resolved in favor of the complainant.

7. Training.

OFCCP is moving forward with the development and delivery of a wide range of training courses for our compliance personnel. The following courses have been or will be delivered by the end of FY 1982:

- (a) Introduction to Contract Compliance Training.
- (b) Investigative Skills Course.
- (c) Handicapped Awareness Program.
- (d) Complaint Intake Processing Training.

OFCCP's training efforts will be directed toward improving the professionalism of our employees and eliminating unnecessary confrontation while emphasizing a bottom line approach to compliance.

8. Management Information Systems.

In March 1982, a new directive system was implemented for communicating up-to-the-minute information to compliance officers and program managers. The previous information-sharing process (from National Office to Region and then to Area Offices) caused undue delays and sometimes failed to keep compliance officers current on program developments. Further, National Office policy was often reinterpreted at each level causing inconsistency in implementation of policy.

Liaison Groups.

Encouraging the formation of liaison groups to communicate with the OFCCP is a major undertaking and a principal program initiative of this Administration. As a result of OFCCP's encouragement, liaison groups are being formed by representatives of business groups, special interest groups, and other organizations.

Approximately 30 liaison groups have been formed throughout the country since the nationwide initiative was launched in January 1982, this includes the Labor Law Section of the American Bar Association

Our experience to date shows that this forum can be used effectively to provide technical assistance without confrontation; to gain a better understanding of OFCCP regulations directly from OFCCP enforcement officials; to share information,

suggestions and recommendations relating to compliance requirements, employment rights, and employers' policies and practices, and to facilitate resolving differences of opinion in compliance matters which, if left unresolved, could result in unnecessary, costly, and protracted litigation.

Liaison groups have been formed both within specific industries and across industry lines. Single industry groups are operating in Seattle (lumber and banking), in Michigan (automotive), in Chicago (insurance), and in Utah and most major cities for the construction industry. Multi-industry groups include, among many others, the Northern California Industry Liaison Group comprised of major companies in the area; a liaison group of corporate offices in Fairfield County, Connecticut; and a liaison group of major companies and corporations in New York.

Liaison group initiative has also taken hold among colleges and universities. For example, the President of the University of Oregon is spearheading a liaison effort with university presidents from the States of Idaho and Washington.

The Texas College and University System has a liaison effort underway. In Massachusetts, several colleges and universities from the Boston area are forming a liaison group to discuss procedural requirements of the compliance program and their effect on institutions of higher learning.

Among other constituencies, a liaison group of handicapped individuals has formed in Portland to discuss barriers to employment, both attitudinal and physical, facing the handicapped workers. In Denver, another group of community leaders established a liaison activity with the OFCCP.

In Washington, D.C. the Director of the OFCCP has been meeting regularly with a medical community liaison group comprised of corporate physicians, industrial hygienists and other representatives, most of whom are members of the President's Committee on the Employment of the Handicapped, to discuss issues affecting the disabled in the workplace.

The liaison group initiative will be an ongoing activity during the course of this Administration. To encourage voluntary compliance we upgraded the quality of technical assistance available to contractors by designating the OFCCP regional executives as the coordinators and lead participants (when invited) in this function. The benefits of this initiative, in terms of good will, improved communications, greater cooperation and desire to conciliate issues of compliance, far exceed any resource investment we might make.

Training and Linkage.

A higher priority and renewed emphasis will be given to training and linkage activities that operate to increase the employment opportunities available to minorities, handicapped persons, Vietnam Era and disabled veterans and women. Whereas in the past, the linkage concept exclusively involved supply and service contractors and the interaction of compliance reviews efforts with the program activities of the Employment and Training Administration of the Department, the concept will be broadened to link local resources, drawing on vocational schools, U.S. Employment Service, craft unions, veterans organizations, trade associations and other existing groups, with business and industry. OFCCP has proposed to approve for five years written affirmative action programs which contain an approved training program. The training and linkage initiative is designed to create incentives for contractors to take increased good faith efforts that enhance job opportunities for the handicapped, minorities, certain veterans, and women.

By codifying the training initiative in the regulations, we have proposed to institutionalize the concept on an ongoing, permanent basis.

Voluntary Compliance Incentives.

Where results are achieved and progress is being made, OFCCP will provide incentives for continued good faith efforts. Incentives for such efforts may include extended-duration affirmative action plans, certificates of merit and letters of commendation.

Conclusion.

As you're well aware, we've proposed two major regulatory revisions in OFCCP. In revising these proposals, based on comments received, we identified several issues which were not specifically addressed, but where change seemed appropriate. Therefore, for purposes of clarity and cohesion, we determined that additional changes should be proposed.

We'll be sending these proposed changes to EEOC and OMB for review in the near future. Following this review the proposal will be published in the Federal Register for comment.

UNITED STATES COMMISSION ON CIVIL RIGHTS

file Civil Rights
Washington, D. C. 20425

August 10, 1982

Edwin Meese III
Counsellor to the President
The White House
Washington, D.C. 20500

Dear Ed:

I understand the White House has set up a civil rights task force under your general direction that includes Mel Bradley, EEOC chairman Clarence Thomas, Deputy Undersecretary of Labor Robert Collyer, and Assistant Attorney General Brad Reynolds. I also understand one of the issues with which the task force is to deal is reform of the Federal sector discrimination complaint process.

In line with my desire that the Commission take a more problem-solving approach to civil rights issues, including the need for change in the Federal complaint process, I want to let you know of my interest in our contributing to the work of the task force.

Please let me know how we can be of help.

Sincerely yours,


CLARENCE M. PENDLETON, JR.
Chairman

cc: Mel Bradley
Clarence Thomas
Robert Collyer
Brad Reynolds
✓ Michael Uhlmann

File Civil Rights
of Jones

Earlier this year, Meharry Medical College, one of this country's two historically black medical schools, was in danger of losing accreditation from the Liaison Committee on Medical Education. Located in Nashville, Tennessee, Meharry lacked access to a sufficient number of patients to provide students the proper clinical training. Without adequate clinical teaching resources, Meharry students could not obtain the practical experience essential for both accreditation and more importantly, the development of diagnostic skills.

Vanderbilt Medical School is also located in the Nashville area. Although Meharry and Vanderbilt medical schools are of the same relative size, they did not enjoy the same access to available hospital beds. Meharry students had slightly over 200 inpatient beds for clinical training. Vanderbilt had access to 2,000 beds, ten times the number available to ^{Meharry} the institution that has trained more than 40 percent of all black physicians in the United States.

This disturbing disparity, along with the complex financial challenges that faced Meharry, led to the President's personal involvement in assisting Meharry to continue its historic service to the nation. The President directed that the existing affiliation between Meharry and the Veteran's Administration Hospital in Murfreesboro, Tennessee be expanded. Over the next one to three years, this will provide Meharry with an additional 100 to 200 teaching beds in internal medicine and surgery.

Not only is this action consistent with the executive order of last September directing additional federal support for historically black colleges and universities, more importantly, it is but one of the President's continuing efforts to build a nation free of racism and full of opportunity. The President holds fast to the guarantees of equal justice and freedom from discrimination. His appointments, the civil rights enforcement record of the Administration and

the economic recovery plan indicate a clear and vigorous commitment to equal opportunity for all.

The President has placed qualified and able blacks in the Administration to play an important policy-making role. The President has selected blacks to serve in 112 top executive and policy making positions. Among his appointees: Samuel Pierce, Secretary of Housing and Urban Development; Carlos Campbell, Assistant Secretary of Economic Development Administration, Department of Commerce; and Harry Singleton, Assistant Secretary-Designate for Civil Rights, Department of Education. The President appointed the first black to serve as chairman of the U.S. Civil Rights Commission and appointed five blacks to serve as U.S. Ambassadors.

It is important to note that this Administration's black appointees do not serve only in positions dealing with minority affairs. Richard Douglas, assistant deputy Secretary of Agriculture and currently acting deputy Secretary, has worked to streamline the Department's operations. He was chairman of the Department's Paper Task Force which reduced USDA's expenditures for publications for FY 1983 by over 4 million dollars. At the Department of Labor, Dr. Lenora Cole-Alexander, Director of the Women's Bureau, has reorganized the Bureau to broaden services to women at local levels. Dr. Alexander is focusing the work priorities of the Bureau on activities to enhance the employability of women and to provide for the childcare needs of working mothers. The Bureau will also be concentrating on changes in job technology and conducting regional job fairs.

In pursuing the goal of racial equality, the President believes an individual should be judged on merit, regardless of race. However, race-conscious remedies such as mandatory busing and racial quotas have not produce the desired results. Before the imposition of mandatory busing in Los Angeles, white enrollment in public schools stood at 37 percent. By 1980, it had dropped to 24 percent. When busing was imposed in Boston, white enrollment dropped from 57 to 35 percent; in Dayton, from 53 to 43 percent; and in Denver, from 57 to 41 percent. Some of this was the result of normal demographic change, but much is clearly attributable to the public's reaction to busing. A similar history is apparent in one community after another across the country--for example, in Cleveland, Wilmington (Delaware), East Baton Rouge, Atlanta, Memphis and Detroit.

Because these remedies have proven ineffective, this Administration is pursuing relief that holds more promise for providing enhanced education to minority students in a desegregated environment, for bringing larger numbers of minorities into the workforce, and for reaching the color blind ideal of equal opportunity for all. The record shows that much progress is being made. Since January 20, 1981, the Civil Rights Division of the Justice Department has filed sixty new cases charging criminal violations of civil rights laws and has conducted trials in forty-six cases. The cases range from wanton racial murder to mistreatment of prisoners and arrestees, to involuntary servitude. This level of activity exceeds that of all other previous administrations.

The Department of Justice has been no less vigorous in working to guarantee all Americans the right to be considered for employment on the basis of individual ability. In the past year the Department filed nine new discrimination cases against public employers. These cases included suits against the state police departments of Vermont and New Hampshire and local police and fire departments in North Carolina and New York City. Eight other suits of employment discrimination have been authorized

and are currently in negotiation. There are also thirteen new investigations that involve some thirty-three other state and municipal agencies.

Civil rights enforcement includes supervision of the implementation of the Voting Rights Act. On June 29 of this year the President signed into law the longest extension of the Act since its enactment. The President views this extension as a vital part of fulfilling his pledge to guarantee equal access to the voting booth for all citizens. As he has so often emphasized, the right to vote is "the most sacred right of free men and women."

In the past year the level of Voting Rights enforcement activity at the Department of Justice has surpassed that of any prior administration. As a consequence, minority voters are increasingly taking their places alongside whites in voting lines without fear of reprisal or intimidation because of race. Since Inauguration Day 1981, Justice has reviewed more than 8400 electoral changes to determine compliance with the Act. The department will not rest on past accomplishments. Now that the Voting Rights Act extension is law, the Division has pledged to maintain the same high levels of enforcement effort. Litigation and pre-clearance responsibilities under the Act will continue to receive the highest priority.

Budget figures also demonstrate the President's commitment to the civil rights effort. Figures reported by previous administrations included spending for non-civil rights activities that this Administration excluded from the FYs 1981, 1982 and 1983 totals. For example, this Administration eliminated the practice of past administrations of reporting all agency "upward mobility" expenditures, most of which were employee development expenses having nothing to do with civil rights requirements, as civil rights expenditures. Deleting those figures from the totals for FY 1980, as they were excluded from the totals for FYs 1981-83, civil rights expenditures have actually increased from \$511 million in

FY 1980 to \$531.4 million in the President's proposed budget for FY 1983.

Finally, the economic plan further demonstrates the President's commitment to civil rights. The economic package generally will enable blacks to move toward economic freedom by reducing inflation, thus increasing blacks' purchasing power, and by creating new jobs. The stagflation of the 1970's and the massive amounts of federal aid and intervention failed to produce improved economic conditions. In fact, black family incomes actually fell in the 1970's while white family incomes increased slightly. A strong economy will provide the greatest hope for blacks and the entire population.

Guaranteeing equality of treatment is government's proper function. The Administration is actively engaged in working toward that goal in civil rights actions generally and employment discrimination suits and Voting Rights cases specifically. The economic plan, dedicated to making people independent, no longer in need of government assistance, is also dedicated to the goal of equal opportunity. Far from repealing the gains of minorities, this Administration is working to solidify them for the generations to come.